IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JAIPUR BENCH

JUDGMENT

Ram Dayal @ Ramdev Vs. State of Rajasthan
(S.B. CRIMINAL APPEAL NO.578/2002)

S. B. Criminal Appeal under Sec.374 (2) Cr.P.C. against the judgment dated 16-3-2002 in Sessions Case No.153/2001 passed by Sh. K.B.Katta, RHJS, Additional Sessions Judge (Fast Track) No.1 Bundi.

Date of Judgment: January 03, 2007.

PRESENT

HON'BLE MR. JUSTICE SHIV KUMAR SHARMA

Mr. Ashwani Chobisa, for the appellant.

Mr. M.L.Goyal, Public Prosecutor for the State.

BY THE COURT: (PER HON'BLE Shiv Kumar Sharma,J.)

Ram Dayal @ Ramdev, the appellant herein, was placed on trial before Learned Additional Sessions Judge (Fast Track) No.1 Bundi, who convicted the appellant under section 376(1) IPC and sentenced him to suffer rigorous imprisonment for seven years and fine of Rs.2000/-, in default to further suffer rigorous imprisonment for two months.

2. As per prosecution story the prosecutrix Yamuna (fictitious name) submitted a written report (Ex.P-1) on February 2, 1999 at Police Station Keshoraipatan stating therein that while she was alone in the house of her grand mother, the appellant came to her and asked her to sleep with him. When she declined the appellant took her in Dhalya and committed rape on her. Hearing hue and cry her maternal uncle Ramdayal reached

there and seeing him appellant fled away. On that report a case was registered and investigation commenced. The prosecutrix was subjected to medical examination, her statement was got recorded under section 164 CrPC. Necessary memos were drawn, the appellant was arrested and on completion of investigation charge sheet was filed. In due course the case came up for trial before the learned Additional Sessions Judge (Fast Track) No.1 Bundi. Charge under sections 376 IPC was framed against the appellant, who denied the charge and claimed trial. The prosecution in support of its case examined as many as 10 witnesses. In the explanation under Sec.313 CrPC, the appellant claimed innocence. No witness in defence was however examined. Learned trial Judge on hearing final submissions convicted and sentenced the appellant as indicated herein above.

3. The contention of learned counsel for the appellant is that in the FIR the only allegation against the appellant was that he pushed her and robbed her prestige. She did not say anything about committing rape on her but subsequently she improved her version. It is further contended that the prosecutrix got married five years back and gave birth to a child. Since no injury was found on the private parts of the prosecutrix and the vaginal swab of prosecutrix was not having any RBI, the offence under section 376 IPC was not established. Learned Public Prosecutor on the other hand however supported the impugned finding of learned trial Judge.

4. I have pondered over the submissions and scanned the material on record.

5. As per report of Sexual Assault (Ex.P-6) Hymen of prosecutrix was found intact. There were no signs of recent intercourse but there were abrasions on her back and right foot.

6. The prosecutrix however in her deposition stated that on the day of incident the appellant committed rape on her. In her cross examination she admitted that she got married five years back. She also admitted that she was eldest issue of her parents and she has younger brother of 15-20 years. She further deposed that the appellant pushed her due to which she fell down and hearing her hue and cry her maternal uncle and others reached there. On scanning the testimony of prosecutrix from the point of trustworthiness, I find that she improved her version at the trial.

7. Having closely scrutinised the ocular and medical evidence adduced at the trial, I find that the act of indecent assault committed by the appellant was magnified into an act of committing rape. The prosecution is not able to establish beyond reasonable doubt that there was penetration. It appears that on being pushed down the prosecutrix struggled and cried and so the appellant desisted and seeing her maternal uncle there he fled away.

8. The point of distinction between an offence to commit rape and to commit indecent assault is that there should be some action on the part of the accused which would show that he is just going to have sexual connection with the woman. In the instant case, it is however proved that the appellant made assault against the prosecutrix for the purpose of outrage her modesty and thus committed an offence under section 354 IPC.

9. For these reasons, I partly allow the appeal and instead of

section 376(1) IPC convict the appellant Ram Dayal @ Ramdev under section 354 IPC and sentence him to suffer rigorous imprisonment for two years. The appellant has already undergone confinement for more than five years five months and ten days and he is still in jail. He shall be set at liberty forthwith, if not required to be detained in any other case.

The impugned judgment of learned trial court stands set aside as indicated above.

(Shiv Kumar Sharma)J.

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